

Message Text

LIMITED OFFICIAL USE

PAGE 01 USUN N 02166 01 OF 02 080018Z

ACTION DLOS-09

INFO OCT-01 IO-13 ISO-00 FEA-01 ACDA-07 AGRE-00 AID-05

CEA-01 CEQ-01 CG-00 CIAE-00 EPG-02 COME-00

DODE-00 DOTE-00 EB-07 EPA-01 ERDA-05 FMC-01

TRSE-00 H-01 INR-07 INT-05 JUSE-00 L-03 NSAE-00

NSC-05 NSF-01 OES-07 OMB-01 PA-01 PM-04 PRS-01

SP-02 SS-15 USIA-06 AF-10 ARA-10 EA-07 EUR-12

NEA-10 /162 W

-----094673 080054Z /14

R 072345Z JUL 77

FM USMISSION USUN NEW YORK

TO SECSTATE WASHDC 4371

LIMITED OFFICIAL USE SECTION 1 OF 2 USUN 2166

FROM: LOSDEL

E.O. 11652: N/A

TAGS: PLOS

SUBJECT: INFORMAL PLENARY OF 6 JULY 1977 ON ARTICLE 17

(LIMITATIONS ON JURISDICTION) OF PART IV (COMPULSORY

DISPUTE SETTLEMENT)

1. SUMMARY: DEBATE ON ARTICLE 17 (LIMITATIONS ON JURISDICTION) ENDED TODAY, WITH SIMILAR STATEMENTS BEING AS REPORTED EARLIER. IRAN, URUGUAY, OMAN, LIBYA, TUNISIA, EL SALVADOR, THE CONGO, THE PHILIPPINES, AND NIGERIA SUPPORTED THE DELETION OF SCIENTIFIC RESEARCH IN 1(C). IRAN, URUGUAY, PAKISTAN, OMAN, LIBYA, TUNISIA, NORWAY, EL SALVADOR, THE CONGO, AND THE PHILIPPINES SUPPORTED THE DELETION OF (1)(D). THE ONLY SIGNIFICANT NOVEL FORMULATION WAS THAT OF THE UNITED KINGDOM, WHOSE REPRESENTATIVE PROPOSED A NEW APPROACH TO 17(1)(D). HE SUGGESTED THAT FIVE CATEGORIES OF FISHERIES PROVISIONS SHOULD BE DISTINGUISHED. DEPENDING ON THE CATEGORY, A DISTINCTION COULD BE DRAWN BETWEEN DISCRETIONARY ACTS BY THE COASTAL STATE BOTH

LIMITED OFFICIAL USE

PAGE 02 USUN N 02166 01 OF 02 080018Z

WITHIN AND WITHOUT LEGALLY PERMISSIBLE LIMITS WITH COMPULSORY ADJUDICATION APPLICABLE TO THE LATTER, BUT NOT TO THE FORMER. TUNISIA POINTED OUT THAT THE OPPOSITION OF THE GROUP OF 77 TO (1)(D) WAS PRIMARILY BASED ON THE DIFFICULTY OF DISTINGUISHING BETWEEN DISCRETIONARY AND ARBITRARY ACTS. AT THE END OF THE DEBATE TUNISIA RAISED THE ISSUE WHETHER OR NOT DELEGATIONS WOULD HAVE THE OPPORTUNITY TO ADDRESS OTHER

ARTICLES, SUCH AS ARTICLE 13 (ACCESS BY PARTIES OTHER THAN STATES), IN A FURTHER SESSION OF THE PLENARY. THE PRESIDENT REPLIED IN THE AFFIRMATIVE. END SUMMARY.

2. SPEAKERS INCLUDED IRAN, URUGUAY, PAKISTAN, OMAN, LIBYA, THE UNITED KINGDOM, TUNISIA, NORWAY, DENMARK, FINLAND, SENEGAL, GHANA, ROMANIA, THE NETHERLANDS, EL SALVADOR, THE CONGO, THE PHILIPPINES, NIGERIA, BULGARIA, GBAHRIN, AND CHILE.

3. 17(1)(CHAPEAU): URUGUAY, TUNISIA, GHANA, AND OMAN INDICATED THAT THEY COULD SUPPORT THE BRAZILIAN APPROACH TO THE CHAPEAU BASED ON AN ENUMERATION OF ZONES TO WHICH THE EXCLUSION FROM ADJUDICATION SHOULD APPLY. TUNISIA, SENEGAL, THE CONGO, THE PHILIPPINES AND NIGERIA SUPPORTED THE PROPOSAL OF MADAGASCAR ON ARTICLE 17 TO SEPARATE "SOVEREIGN RIGHTS" FROM "EXCLUSIVE JURISDICTION AND EXCLUSIVE RIGHTS." AS TO THE ZONES TO BE SUBSUMED UNDER THE CHAPEAU, TUNISIA STATED THAT THE TERRITORIAL SEA WAS INCLUDED; DENMARK, THAT THE CHAPEAU SHOULD APPLY TO THE TERRITORIAL SEA; URUGUAY, THAT SPECIFIC REFERENCE TO THE ECONOMIC ZONE AND SHELF SHOULD BE INCLUDED; AND ROMANIA, THAT THE REFERENCE TO ZONES BE ACCOMPANIED BY THE EXISTING PHRASE RELATING TO SOVEREIGN RIGHTS AND EXCLUSIVE JURISDICTION. FINLAND SUPPORTED THE SWISS PROPOSAL THAT THE CHAPEAU SHOULD PROVIDE FOR OPTIONAL RATHER THAN AUTOMATIC EXCLUSION.
LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 USUN N 02166 01 OF 02 080018Z

4. ARTICLE 17(1)(A) - IRAN, PAKISTAN, LIBYA, EL SALVADOR, NIGERIA, OMAN, AND THE CONGO PROPOSED THE DELETION OF THE PHRASE "AND OTHER INTERNATIONALLY LAWFUL USES OF THE SEA." URUGUAY PROPOSED THAT THE WORD "USES" BE CLARIFIED AND THAT IT BE CONSISTENT WITH ARTICLE 46 OF PART II. DENMARK AND NORWAY SUPPORTED THE INCLUSION OF "RIGHTS" BEFORE "FREEDOMS". URUGUAY AND DENMARK PROPOSED THE DELETION OF "PIPELINES." DENMARK AND FINLAND SUPPORTED THE AMENDMENTS PROPOSED BY SINGAPORE, ESPECIALLY THE OMISSION OF "RELATED TO NAVIGATION OF COMMUNICATION." THE PHILIPPINES PROPOSED THE DELETION OF REFERENCE TO "OVERFLIGHT." BULGARIA AND ROMANIA SUPPORTED THE RETENTION OF 1(A) AS DRAFTED.

5. ARTICLE 17(1)(B) - BULGARIA AND ROMANIA STATED THAT THEY COULD RETAIN THE PARAGRAPH AS DRAFTED. NORWAY AND URUGUAY PROPOSED THE INCLUSION OF "USES" AFTER "FREEDOMS" WERE THE LAST CLAUSE OF 1(A) RETAINED. URUGUAY WOULD SHORTEN THE SECOND HALF OF THIS SUBPARAGRAPH TO "LAWS OR REGULATIONS ENACTED BY THE COASTAL STATE WHICH ARE NOT INCOMPATIBLE WITH INTERNATIONAL LAW."

LIMITED OFFICIAL USE

NNN

LIMITED OFFICIAL USE

PAGE 01 USUN N 02166 02 OF 02 080031Z
ACTION DLOS-09

INFO OCT-01 IO-13 ISO-00 FEA-01 ACDA-07 AGRE-00 AID-05
CEA-01 CEQ-01 CG-00 CIAE-00 EPG-02 COME-00
DODE-00 DOTE-00 EB-07 EPA-01 ERDA-05 FMC-01
TRSE-00 H-01 INR-07 INT-05 JUSE-00 L-03 NSAE-00
NSC-05 NSF-01 OES-07 OMB-01 PA-01 PM-04 PRS-01
SP-02 SS-15 USIA-06 AF-10 ARA-10 EA-07 EUR-12
NEA-10 /162 W

-----094800 080054Z /14

R 072345Z JUL 77
FM USMISSION USUN NEW YORK
TO SECSTATE WASHDC 4372

LIMITED OFFICIAL USE SECTION 2 OF 2 USUN 2166

FROM: LOSDEL

6. ARTICLE 17(1)(C) - IRAN, URUGUAY, PAKISTAN, OMAN,
LIBYA, TUNISIA, EL SALVADOR, THE CONGO, AND THE PHILIPPINES
PROPOSED THE DELETION OF THE REFERENCE TO "SCIENTIFIC
RESEARCH." URUGUAY AND DENMARK PREFERRED "RULES OR STAND-
ARDS" TO "STANDARDS AND CRITERIA." OMAN STATED THAT
THE PROVISION ON THE MARINE ENVIRONMENT SHOULD APPLY TO
USER STATES AS WELL AS COASTAL STATES. BULGARIA SUPPORTED
THE PROPOSAL OF THE USSR FOR A SEPARATE PROVISION ON
SCIENTIFIC RESEARCH.

7. ARTICLE 17 (1)(C) - IRAN, URUGUAY, PAKISTAN, OMAN,
LIBYA, TUNISIA, NORWAY, EL SALVADOR, THE CONGO, AND THE
PHILIPPINES SUPPORTED THE DELETION OF (1)(D). NORWAY
INDICATED THAT A FALLBACK TO COMPULSORY CONCILIATION PRO-
CEDURE MIGHT BE FEASIBLE. DENMARK, FINLAND, AND ROMANIA
SUPPORTED THE RETENTION OF (1)(D). FINLAND, ROMANIA, AND
BULGARIA SUPPORTED THE PROPOSALS FOR THE DELETION OF
"MANIFESTLY" AND OF THE PROVISIO RELATING TO "SOVEREIGN
LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 02 USUN N 02166 02 OF 02 080031Z

RIGHTS."

8. THE UNITED KINGDOM REPRESENTATIVE STATED THAT WERE A ZONAL APPROACH TO BE APPLIED TO THE CHAPEAU, THE CLAUSE "DISPUTES RELATING TO THE EXERCISE BY A COASTAL STATE OF ITS RIGHTS OR JURISDICTION IN THE EXCLUSIVE ECONOMIC ZONE" SHOULD BE RETAINED, AS ABSENT SUCH A PROVISION THE CHAPEAU WOULD BE TOO BROAD IN ITS APPLICATION. HE BELIEVED THAT THE WORDS "OTHER INTERATIONALLY LAWFUL USES" WERE CONSEQUENTIAL, I.E., DEPENDENT ON THE WORDING OF ARTICLE 46 AND SHOULD BE ADAPTED TO ANY CHANGES IN THAT ARTICLE. IN AN ATTEMPT TO FIND A COMPROMISE APPROACH TO 1(D), HE INDICATED FIVE MAJOR CATEGORIES OF FISHERIES PROVISIONS TO WHICH (1)(D) MIGHT APPLY; (1) PROVISIONS WITHIN THE CONVENTION ITSELF; (2) DETERMINATIONS BY THE COASTAL STATE UNDER ARTICLES 50 AND 51; (3) ACCESS AGREEMENTS CONCLUDED BETWEEN COASTAL AND OTHER STATES; (4) CONSERVATION AND MANAGEMENT REGULATIONS; (5) DAY-TO-DAY IMPLEMENTATION OF THE REGULATIONS. PART IV MAY APPLY TO ALL OR ONLY SOME OF THESE CATEGORIES. IN ADDITION, A DISTINCTION COULD BE DRAWN BETWEEN DISCRETIONARY ACTS WITHIN THE LEGAL LIMITS FOR SUCH DISCRETION, WHICH WOULD NOT BE SUBJECT TO ADJUDICATION, AND ACTS OUTSIDE THE LIMITS FOR DISCRETION TO WHICH COMPULSORY ADJUDICATION WOULD APPLY. PARAGRAPH (2) SHOULD BE REDRAFTED SO AS TO APPLY ONLY PURSUANT TO AN AGREEMENT BETWEEN THE PARTIES. A PROVISION FOR "OPTING IN" SHOULD BE ADDED, AS A STATE SHOULD BE PERMITTED TO RENOUNCE ITS RIGHTS TO EXCLUDE CERTAIN DISPUTES FROM JURISDICTION. THE UK REPRESENTATIVE FURTHER PROPOSED THAT IF 17(3) WRE DELETED, THE PHRASE "IN STRICT ACCORDANCE WITH ARTICLES 9 & 17" SHOULD BE INCLUDED IN ARTICLE 10(3) OF PART IV.

LIMITED OFFICIAL USE

LIMITED OFFICIAL USE

PAGE 03 USUN N 02166 02 OF 02 080031Z

9. TUNISIA, WHILE SUPPORTING THE DELETION OF (1)(D), POINTED OUT THAT THE OPPOSITION OF THE GROUP OF 77 TO THAT PROVISION WAS PRIMARILY BASED ON THE DIFFICULTY OF DISTINGUISHING BETWEEN DISCRETIONARY AND ARBITRARY ACTS. THIS PROVISION COULD BE RECONSIDERED IF IT WERE LIMITED TO ARBITRARY ACTS.

10. THE PRESIDENT ADJOURNED THE MEETING TO A DATE TO BE ANNOUNCED, STATING FURTHER DISCUSSION WILL PRIMARILY BE DIRECTED TO THE ANNEXES TO PART IV, ALTHOUGH HE DID NOT PRECLUDE THE POSSIBILITY OF DISCUSSING THE ARTICLES IN PART IV.

LEONARD

LIMITED OFFICIAL USE

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: DISPUTE SETTLEMENT, LAW OF THE SEA, RESEARCH, COMMITTEE MEETINGS
Control Number: n/a
Copy: SINGLE
Sent Date: 07-Jul-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1977USUNN02166
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D770242-0316
Format: TEL
From: USUN NEW YORK
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1977/newtext/t19770780/aaaacrwr.tel
Line Count: 223
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 16f9146f-c288-dd11-92da-001cc4696bcc
Office: ACTION DLOS
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 03-Dec-2004 12:00:00 am
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 1931233
Secure: OPEN
Status: NATIVE
Subject: INFORMAL PLENARY OF 6 JULY 1977 ON ARTICLE 17 (LIMITATIONS ON JURISDICTION) OF PART IV (COMPULSORY DISPUTE SETTLEMENT)
TAGS: PLOS, XX
To: STATE
Type: TE
vdkgvkey: odbc://SAS/SAS.dbo.SAS_Docs/16f9146f-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009